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No. 74-1366

In the
Supreme Court of the United States
October Term, 1975

ROBERT AND SANDRA SCHAEFER, ET AL.,
Plaintiffs-Appellants,

vs.

FIRST NATIONAL BANK OF LINCOLNWOOD, ET AL.
Defendants-Appellees.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The Seventh Circuit

REPLY MEMORANDUM TO THE UNITED STATES AS AMICUS CURIAE

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MEMORANDUM IN RESPONSE TO AMICUS CURIAE MEMORANDUM OF THE UNITED STATES FILED PURSUANT TO ORDER OF THE SUPREME COURT

The plaintiffs-petitioners are gratified that the Solicitor General of the United States has agreed with our legal position with respect to application of the antitrust laws to stock market manipulation cases. However, we are totally dismayed that the Solicitor General has seen fit to recommend denial of Certiorari. Denial of Certiorari would, in our opinion, have serious deleterious results in view of the incorrect posture that would remain in this area of law if the decisions of the District Court and the Seventh Circuit Court of Appeals were permitted to stand.

The Solicitor General seriously misapprehends the number and quality of applications in this area of law. Reversal of the Seventh Circuit would not be expected to expand the number of cases involved in the courts, because each securities manipulation that constitutes an antitrust violation also constitutes a securities violation. It would merely add the appropriate rule of law and proper dimensions of damages to the existing manipulations cases. Moreover, the addition of the multiple damages threat could be reasonably foreseen to expedite the settlement of such cases and in amounts more nearly approaching the actual out of pocket damages of persons who can be expected to file claims. As has been experienced with the civil antitrust cases not dealing with securities, the settled cases still normally return substantially less than 100% of the claimants' dollar of actual damages.

It may be that a reduction of court time in the other securities cases can be accomplished due to the prospect of multiple damages in manipulation cases.

The assumption of the Solicitor General that the correct application of the law to this area would not have any significant effect on the private enforcement of the antitrust laws as a supplement to the governmental enforcement of the Statute is clearly erroneous. This misapprehension arises partly from the fact that the attempted application of antitrust treble statutory damages to securities manipulation cases is relatively novel. Indeed, we know of no other case where this issue has been raised as squarely as this case despite the conflicts indicated in the petition on neighboring areas. Another reason for the incorrectness of the assumption of the Solicitor General is the practice of the Justice Department and the SEC when manipulators are apprehended. In such an event, they are normally involved in more than one

manipulation. However, the government prosecution of the cases is normally limited to one of the several manipulations that the prosecutors may elect, either to ease their own case load or to save costs and avoid multiple prosecutions against the same individuals. Criminally, this would make some sense; civilly the victims of the unprosecuted manipulation may be left entirely out in the cold.

Manipulators in the instant case have testified during the course of depositions that they were involved in or knew of manipulation activity in several other stocks in the same time period and still other stocks at another earlier point in time. Moreover this information was furnished to the SEC and the Justice Department in connection with the cooperation in exchange for expectations of leniency. (See deposition of George Georges, third segment, of December 12, 1972, pp. 76-207 indicating additional manipulation activity in Alloys Unlimited, Mercury Chemical, Pentron, Ameco, Electronic Associates, Rolland Products.) Mr. Georges was not even named a criminal defendant, although he was one of the principal manipulators.

We do not seek to create new rights. We merely seek endorsement of the actual clear language of the Sherman Act. This may make little difference to the United States. The government may not care about the basis of their criminal prosecution for manipulation: securities violation, antitrust violation or both. Government civil remedies in stock manipulations are normally limited to injunctive relief. They are not effective civil enforcers. However, use of the antitrust provisions in private civil cases would permit much more effective private civil enforcement as an important adjunct of the statute.

CONCLUSION

For the reasons set forth herein and in our Petition for Certiorari, this Supreme Court should not turn its back on a clearly erroneous important legal position taken by the Seventh Circuit in an area of important public consideration. In addition to establishing the correct legal results, decisions by the Supreme Court correcting lower court's decisions could reasonably be anticipated to have a substantial deterrent effect on manipulators who otherwise would be more willing to take a chance on a traditionally light criminal sentence, if ever caught, and regurgitation of only a minor portion of the profits to be repaid at a very significantly later date, if at all. Reversal here would not only clarify an important area in our securities and antitrust laws, it would significantly serve to improve the image of justice and due process which our entire judicial system so badly needs.

Respectfully submitted,

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